

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SANDOZ INC.,

Plaintiff,

-against-

MEDWIZ SOLUTIONS, LLC; BLANCHE REISS;
BATYA GORELICK; and UNKNOWN
MEMBERS OF MEDWIZ SOLUTIONS, LLC 1–
10,

Defendants.

USDC SDNY
DOCUMENT
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DATE FILED: 2/4/2022

No. 20-CV-6943 (NSR)

ORDER

NELSON S. ROMÁN, United States District Judge:

The Court is in receipt of a letter from Plaintiff Sandoz Inc. dated January 26, 2022 (ECF No. 26). On January 12, 2022, this Court granted in part and denied in part Defendants’ motion to dismiss Plaintiff’s complaint. (ECF No. 25.) Within the Opinion & Order, this Court dismissed Plaintiff’s RICO claim without prejudice and granted Plaintiff leave to file an amended complaint by March 4, 2022 and noted that if Plaintiff fails to amend within the time allowed, and without good cause, the RICO claim dismissed without prejudice will be deemed to be dismissed with prejudice. Plaintiff has informed the Court that it does not intend to file an Amended Complaint but asks the Court to continue treating the RICO claim as dismissed without prejudice as the matter moves forward into discovery. (ECF No. 26.)

Whether “good cause” exists for a plaintiff to file an amended complaint is an issue within discretion of the Court pursuant to Federal Rule of Civil Procedure 41. Courts have permitted plaintiffs to amend their complaints after learning of relevant facts during discovery that form basis for a claim. *See, e.g., Balverde v. Lunella Ristorante, Inc.*, No. 15 Civ. 5518 (ER), 2017 WL 1964934 (S.D.N.Y. May 10, 2017) (“the Court finds that Plaintiffs learned of the necessary facts

for amending their Complaint during the course of discovery and filed their motion to amend the Complaint within a reasonable time after discovering these facts.”); *JP Morgan Chase Bank, N.A. v. IDW Grp., LLC*, No. 08 CIV. 9116 (PGG), 2009 WL 1357946, at *6 (S.D.N.Y. May 12, 2009) (finding good cause to amend complaint to add defendant where, while Plaintiff “may have suspected” the role of the putative defendant in complaint-of events, “it lacked evidence” to name the putative defendant as a defendant until reviewing defendant’s document production and a relevant deposition).

The Court notes that Defendants did not respond to Plaintiff’s request. The Court hereby GRANTS Plaintiff’s request and will treat the RICO claim as dismissed without prejudice as the parties move into discovery. Because Plaintiff has indicated it will not file an amended pleading at this time, the Court hereby directs the parties to complete and file a Case Management Plan and Scheduling Order (blank form attached hereto) by February 21, 2022. The Court notes for Plaintiff that the parties are required to agree to a deadline for amended pleadings on the Scheduling Order. Should Plaintiff seek to replead the RICO claim after commencement of discovery, Plaintiff will have until the agreed-upon deadline within the Scheduling Order to file such amended pleading.

Dated: February 4, 2022
White Plains, New York

SO ORDERED:



NELSON S. ROMÁN
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Rev. Jan. 2012

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**CIVIL CASE DISCOVERY PLAN
AND SCHEDULING ORDER**

Plaintiff(s),
- against -

Defendant(s). _____ CV _____ (NSR)

-----X

This Civil Case Discovery Plan and Scheduling Order is adopted, after consultation with counsel, pursuant to Fed. R. Civ. P. 16 and 26(f):

1. All parties [consent] [do not consent] to conducting all further proceedings before a Magistrate Judge, including motions and trial, pursuant to 28 U.S.C. § 636(c). The parties are free to withhold consent without adverse substantive consequences. (If all parties consent, the remaining paragraphs of this form need not be completed.)
2. This case [is] [is not] to be tried to a jury.
3. Joinder of additional parties must be accomplished by _____.
4. Amended pleadings may be filed until _____.
5. Interrogatories shall be served no later than _____, and responses thereto shall be served within thirty (30) days thereafter. The provisions of Local Civil Rule 33.3 [shall] [shall not] apply to this case.
6. First request for production of documents, if any, shall be served no later than _____.
7. Non-expert depositions shall be completed by _____.
 - a. Unless counsel agree otherwise or the Court so orders, depositions shall not be held until all parties have responded to any first requests for production of documents.
 - b. Depositions shall proceed concurrently.
 - c. Whenever possible, unless counsel agree otherwise or the Court so orders,

non-party depositions shall follow party depositions.

8. Any further interrogatories, including expert interrogatories, shall be served no later than _____.
9. Requests to Admit, if any, shall be served no later than _____.
10. Expert reports shall be served no later than _____.
11. Rebuttal expert reports shall be served no later than _____.
12. Expert depositions shall be completed by _____.
13. Additional provisions agreed upon by counsel are attached hereto and made a part hereof.
14. **ALL DISCOVERY SHALL BE COMPLETED BY** _____.
15. Any motions shall be filed in accordance with the Court's Individual Practices.
16. This Civil Case Discovery Plan and Scheduling Order may not be changed without leave of Court (or the assigned Magistrate Judge acting under a specific order of reference).
17. The Magistrate Judge assigned to this case is the Hon. _____.
18. If, after entry of this Order, the parties consent to trial before a Magistrate Judge, the Magistrate Judge will schedule a date certain for trial and will, if necessary, amend this Order consistent therewith.
19. The next case management conference is scheduled for _____, at _____. (The Court will set this date at the initial conference.)

SO ORDERED.

Dated: White Plains, New York

Nelson S. Román, U.S. District Judge